

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3757 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AMARSING CHARTURSING CHAUHAN

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH , learned Advocate for the
Petitioner.

MR UR BHATT, learned Assistant Government Pleader
for the respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 24/07/96

ORAL JUDGEMENT

Petitioner Amarsinh Chatursinh Chauhan , by way
of this petition under Article 226 of the Constitution of
India, has challenged the order of his detention dated
2-3-96 passed by the Commissioner of Police, Ahmedabad

city , under section 3 (1) of the Gujarat Prevention of Anti Social Activities Act, 1985.

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on three pending investigation cases registered under the provisions of the Bombay Prohibition Act and the statements of four witnesses of the alleged incidents of 1-2-96 and 15-2-96 wherein the witnesses were beaten because they refused to store illicit liquor in their residential premises and also on the ground that they are the informants of the police and that when the people gathered, the detenu rushed towards the crowd with an open knife with the result that an atmosphere of fear and terror was created in the area. Considering this material, the detaining authority recorded a finding that the the detenu is a "bootlegger" within the meaning of section 2 (b) of the said Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it was necessary to pass the order of detention against him and, therefore, the impugned order is passed, which is under challenge in the present petition.

Ms Kachhava, learned Advocate appearing for the detenu, has raised number of contentions. However, it is not necessary to deal with each of them as the present petition can be disposed off on the first contention itself. Ms Kachhava has submitted that the subjective satisfaction arrived at by the detaining authority that the detenu is a bootlegger is not genuine as the alleged activities of the detenu as a bootlegger do not affect adversely or are not likely to affect adversely the maintenance of public order. In the submission of Ms Kachhava, the offences alleged against the detenu in the grounds of detention and also the allegations made by the witnesses could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area in question giving rise to the question of maintenance of public order. In support of her submission, reliance is placed by Ms Kachhava on the decision of the Supreme Court in the case of Piyush Kantilal Mehta vs Commissioner of Police, Ahmedabad city AIR 1989 SC 491.

The Supreme Court in Piyush Kantilal Mehta's case (supra) has held that it may be that the detenu is a bootlegger within the meaning of S.,2 (b) of the Act, but merely because he is a bootlegger, he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of S.3 of the

Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order. A person may be very fierce by nature, but so long as the public generally are not affected by his activities or conduct, the question of maintenance of public order will not arise. In the present case the three prohibition cases registered against the detenu are pending at the investigation stage. Considering the statements of the witnesses, I am of the view that they are vague and general and no reliance can be placed on the same. In that view of the matter, I am of the view that the subjective satisfaction arrived at by the detaining authority is not genuine and, therefore, the continued detention of the detenu is vitiated.

Mr.U.R.Bhatt, learned Assistant Government Pleader, appearing for the respondents, however, submitted that the fact that these cases have been registered coupled with the fact that there are statements of the witnesses in support thereof that the detenu is engaged in manufacturing illicit liquor is sufficient to hold that there is likelihood of breach of public order. In the submission of Mr.Bhatt, with a view to preventing this manufacturing activity of illicit liquor, the detaining authority thought it necessary to detain the detenu. In view of the decision of the Supreme Court in Piyush Kantilal's case (supra) , it is not possible for this Court to accept the submission of Mr. Bhatt. Assuming that the allegation of the activity of manufacturing illicit liquor by the detenu is true, the same can , by no stretch of imagination, be construed as causing breach of public order and, therefore, it cannot be said that the subjective satisfaction arrived at by the detaining authority for the purpose of passing the order of detention was genuine. Therefore, the continuous detention of the detenu is vitiated.

In the result, this petition is allowed. The impugned order of detention dated 2-3-96 is quashed and set aside. The detenu Amarsinh Chatursinh Chauhan is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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